

Application/Control Number: 09/495,818
Art Unit: 2141

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/495,818
Filing Date: February 01, 2000
Appellant(s): BHOI ET AL.

Patrick Keane
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/28/04.



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EXAMINER

WILLETT, STEPHAN F

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 09/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

(1) *Real Party in Interest*

Examiner agrees with the statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

Examiner agrees with the statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

Examiner agrees with the statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

Examiner agrees with the appellant's statement of the status of amendments after final rejection contained in the brief is correct. The title proposed in the amendment is not raised as an issue on appeal, thus the amendment after final does not place the application in better form for appeal and should not be entered.

(5) *Summary of Invention*

Examiner agrees with the summary of invention contained in the brief is correct.

(6) Issues

Examiner agrees with the appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Examiner disagrees with the appellant's grouping of the claims. The appellant states "independent claims 1 and 14 must be considered separately". However, fetching "the" requests in claim 1 reads on fetching "all of [sic]" requests. Claim 14 adds functionality "such that the possibility of dropping a request from an external queue is minimized and the response time of the application system to the requests is minimized". However, inherently the system in the Swales patent can perform this intended use, *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir. 1997). Thus, claims 1 and 14 stand or fall together.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

6,321,272	Swales	11-2001
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(10) Grounds of Rejection

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U. S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Swales with Patent Number 6,321,272.

Regarding claim(s) 1, 14, Swales teaches a TCP/IP application that processes network external requests, col. 5, lines 9-13. Each of the queues described below has an interface that assists in fetching requests from the queues that reads on network interaction modules, for example, the server interface, col. 5, line 66; the client interface, col. 6, line 7, the backplane driver, col. 6, lines 61-62 and "the PLC interfaces [network interaction module] with the web server", col. 6, line 23. However, a more relevant network interaction module to the subsequent processing performed in claim 1 would be one described as "proxy is general purpose", etc., col. 10, lines 25-32, which obviously could be a software module, not a server. Swales teaches a network request queue, col. 5, lines 47-50 and 66-67 and "queuing mechanism", col. 5, line 66. Figures 2-3 do show the "external requests" are outside the Data Service System 20 and Server Application System 40, and emanate from outside Kernels 21, 41. The reference

teaches numerous queues, col. 6, lines 7-10 any of which are external, relatively speaking. Thus, external queues would clearly be “the ACM 79C961 [that] provides a transmit queue interface, a receive queue interface”, col. 5, lines 27-28. However “the server 58 interface uses queuing mechanism and call back functions”, col. 5, lines 66-67 which are external, especially when considered external relative to which application module. Note also that element 58 in Figure 3 is labeled client task versus tasks 60 and 62 which implies an external status. Claim 1 claims “fetched” and Swales describes a “passing” request method at col. 6, lines 1-22 along with “client application queues” that reads on the claimed external queues. Swales teaches determining whether a request will be processed, col. 8, lines 43-47 and “the proxy 116 [software] has the ability to slow down [means store in an external queue, external here being external to the subnet] any traffic which needs to enter [must be stored before it enters] the subnet to enforce network loading rules”, col. 12, lines 43-45, but requests “must first pass through a throttling router [module] or proxy in order to gain access to control stations on the subnet”, col. 13, lines 48-50. Swales teaches processing based on processing capacity and rate of requests, col. 11, lines 30-34, col. 12, lines 43-45, col. 13, lines 4-7 as “number of participants can be calculated”, 34-38. Swales teaches internal queues as a client task, col. 6, lines 7-8 as MSTR block, col. 6, lines 28-31, server task, col. 8, lines 5-7, HTTP server task, col. 8, lines 53-54, etc., col. 8, lines 63-65. Swales teaches restricting requests to an application to achieve efficient processing of requests, col. 10, lines 32-41.

3. Regarding claims 2, Swales teaches rejecting certain requests, col. 10, lines 32-

36.

4. Regarding claims 3, 9, 15, Swales teaches closing connections as “if the TCP/IP event is an accepted connection” and then “the client task processes the message to advance the transactions if there are any”, col. 7, lines 48-49, 51-52 and “the connection state machines are used for ... closing connections”, col. 7, lines 24-26. .

5. Regarding claims 4, 16, Swales teaches returning a rejection with a status code, col. 13, lines 56-62.

6. Regarding claims 5, 17, Swales teaches an HTTP response, col. 8, lines 56-57.

7. Regarding claims 6, 18, Swales teaches determining which requests are processed first, col. 6, lines 44-50.

8. Regarding claims 7, Swales teaches an internal queue of predetermined length, col. 13, lines 5-11. Swales teaches determining which requests will processed and sending them to an internal queue, col. 13, lines 56-60. Swales teaches notification of processing results, col. 7, lines 47-52.

9. Regarding claims 8, 10, 12, 19, Swales teaches an internal queue that equals the external queue that limits access to the internal queue, col. 8, lines 44-47. Swales teaches forwarding requests to the internal queue when they can be processed, col. 8, lines 48-51.

10. Regarding claims 11, 13, 20, Swales teaches processing requests based on load factors, col. 11, lines 33-34, 39-41, col. 14, lines 7-15.

Response to Brief

18. The broad claim language used is interpreted on its face and based on this interpretation the claims have been rejected.

19. The limited structure claimed, without more functional language, reads on the references provided. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

21. Applicant suggested "where a particular server is busy", Paper No. 6, Page 15, line 14. The above argument is not commensurate with what is presently claimed and therefore will not be considered at this time. Applicant again later suggests "there is no server in the Swales patent", Appeal Brief dated June 28, 2004, page 6, line 16, but stated the Swales "proxy server", id., line 10 and "the Swales patent does not teach ... requests received at a server", id., page 8, lines 6-7. First, the applicant's own statements contradict themselves. Second, there is no "server" claimed by the applicant. This point is initially illustrated to highlight the applicant's misplaced and unreasonable interpretations. In addition, this last point raises applicant's suggestion that "the Swales patent is directed to ... the **Internet connection**, and is not concerned with the manner by which a server [or really application software (module)] processes requests", id., page 7, lines 13-14. But the claimed "external requests" arrive and are clearly monitored at the "Internet connection". Again the "Internet connection" reads on one of many Internet connections that makeup a network, as do the "external" requests/queues, and these connections or requests are "external" relative to one another. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

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11. Naturally, servers must "determine requests which will [or will] not be processed", id., line 9 to function. These requests are passed through many applications' queues until processing is complete using "simple queuing theory" in Swales at col. 11, lines 52-53. Specifically, "the proxy 116 [software] has the ability to slow down [means store in an external queue, external here being external to the subnet] any traffic which needs to enter [must be stored before it enters] the subnet to enforce network loading rules", col. 12, lines 43-45 such as the "number of participants can be calculated", col. 13, lines 34-38. Requests "must first pass through a throttling router [module] or proxy in order to gain access to control stations on the subnet", col. 13, lines 48-50 in Swales. The above inherently achieves the functionality "such that the possibility of dropping a request from an external queue is minimized and the response time of the application system to the requests is minimized".

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

sfw

Art Unit 2141

9/6/04

Conferee

JACK B. HARVEY
SUPERVISORY PATENT EXAMINER


RUPAL DHARIA
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